

**BOARD OF APPEALS CASE NO. 5081**

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**BEFORE THE**

**APPLICANT: Charles E. Walter, Jr.**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to allow two  
residential apartment units in the B3 District;  
2721 Conowingo Road, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 12/20/00 & 12/27/00**

**HEARING DATE: January 31, 2001**

**Record: 12/22/00 & 12/29/00**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Charles E. Walter, Jr., is seeking a special exception pursuant to Section 267-53F(1) of the Harford County Code, to allow two (2) residential apartment units in a B3/General Business District.

The subject parcel is located at 2721 Conowingo Road, Bel Air, Maryland 21015 and is more particularly identified on Tax Map 34, Grid 1E, Parcel 458. The parcel consists of 8.45 acres, is presently zoned B3/General Business and AG/Agricultural and is entirely within the Third Election District.

Mr. Charles E. Walters appeared and identified himself as the Applicant in this case. Mr. Walters testified that the subject building was constructed in 1948 and he grew up there. The first floor was used as a grocery store in those days and the second floor was family living space. The building has had a variety of uses since it was built. The witness testified that the site plan identified as Exhibit 1 was revised slightly at the suggestion of the Harford County Department of Planning and Zoning, The building will remain essentially as and where it is. The parcel will continue to be actively farmed on 75% of the existing acreage and the witness plans to maintain landscaping and appearance. The request is to create two apartments where one existed formerly. The witness stated that the application meets or exceeds all of the requirements of Section 267-53F(1) and he did not believe any adverse impact would result from this proposed use at this proposed location.

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Mr. Anthony McClune testified on behalf of the Department of Planning and Zoning. Mr. McClune agreed that the Applicant's request meets or exceeds all of the requirements of the Harford County Code, Section 267-53F(1). Additionally, Mr. McClune discussed the "Limitations, Guides and Standards" set forth in Section 267-9I of the Harford County Code in light of the subject application. The Department of Planning and Zoning's investigation and analysis is thorough, complete and unrefuted and is, therefore, set forth at length below and adopted by the Hearing Examiner as findings of facts in the subject case.

There were no persons who appeared in opposition to the subject Application,

### **CONCLUSION:**

The Applicant is seeking a special exception pursuant to Section 267-53F(1) of the Harford County Code to create two apartments on the second floor of an existing two-story structure in a B3/General Business District.

Based on the thorough analysis and testimony of the Department of Planning and Zoning, the Hearing Examiner finds that the Applicant has clearly demonstrated that he will meet or exceed all Code requirements. Further, an analysis of the provisions of Section 267-9I does not reveal that any adverse impacts will result from the creation of two apartments where only one existed previously.

### **Section 267-53F(1):**

*F. Residential uses. [Amended by Bill Nos. 84-57; 86-12; 88-85; 88-87]*

*(1) Apartments, dwellings, garden, mid-rise and high-rise. These uses may be granted in the R4 and B3 Districts, provided that*

The subject property is zoned B3/General Business District and AG/Agricultural. The area containing the apartments is located in the B3 zoned area. The property is improved with an existing 2-story block building with a business on the first floor and the subject two (2) apartments on the second floor. The building pre dates zoning. There has always been a business on the first floor and at least one (1) apartment on the second floor since the building was constructed.

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- (a) A minimum parcel area of not less than five (5) or more than fifteen (15) acres shall be established.***

The subject property is 8.45± acres.

- (b) The density shall not exceed twenty (20) dwelling units per acre for mid-rise apartments and thirty (30) dwelling units per acre for high-rise apartments, and the maximum building coverage shall be forty percent (40%) of the total parcel for mid-rise apartments and thirty percent (30%) of the total parcel for high-rise apartments.***

The Applicant is only seeking approval to keep the two (2) apartments on the second floor and is under the density permitted and building coverage allowed by this section.

- (c) The location is suitable for apartment dwellings with regard to traffic, access, efficiency and convenience of land use and safety.***

The building is located on U.S. Route 1, which is a State owned arterial road. There is adequate parking for both the business and the two (2) apartments. Across the front of the property there are existing curb cuts and commercial entrances that are more than sufficient to handle the existing uses. Site distance in both directions is good.

- (d) The proposed project is designed with properly arranged traffic flow and parking, buildings which are compatible and harmonious with surrounding uses, minimum obstruction to the view of those who live in the surrounding area and no adverse effect upon adjoining or surrounding properties.***

The Applicant is utilizing an existing building. The entrances were established by the State several years ago during an improvement project for U.S. Route 1 in the general area. To allow one (1) additional apartment in the subject building should have no impact on the adjacent properties.

- (e) The open space shall constitute at least thirty-five percent (35%) of the parcel area, of which at least forty percent (40%) shall be suitable for and devoted to active recreation.***

The open area around the subject building exceeds the requirements pursuant to this section.

- (f) Any area not used for buildings, structures or parking shall be landscaped and properly maintained.***

The area around the building and outside of the fenced pasture is landscaped with mature trees and shrubbery as reflected by the site photographs.

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- (g) In the B3 District, apartment dwelling structures shall be able to provide retail and service uses primarily intended for the future residents to the extent of one thousand (1,000) square feet of gross floor area for every one hundred (100) dwelling units within the project. Business uses shall be located on only the first two (2) floors of any building. No more than one (1) restaurant or bar shall be permitted. No freestanding signs advertising the business uses shall be allowed.***

As stated earlier in the report, the existing 2-story building existed prior to zoning and has always contained a business on the first floor and until recently a 2400 square foot apartment on the second floor. The only change is the Applicant requests approval to allow the 2400 square foot apartment to be split into two apartments. It is the position of the Department that the proposal is in compliance with this requirement.

### **Section 267-9I:**

- (1) The number of persons living or working in the immediate area.***

The property is located in a rural area of the County that is sparsely populated. There are no major residential developments. The conversion of the existing apartment to create one (1) additional apartment should have no adverse impact on the surrounding neighborhood and the intent of the Code.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.***

U.S. Route 1 is a State owned arterial road. There is no reason to believe that allowing the existing 2400 square foot apartment to be converted into two (2) apartments will adversely impact traffic flow along this area of U.S. Route 1.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.***

The proposal is a use that is permitted in the Agricultural District with Board approval. There is no reason to believe that should the proposal be approved, it would have any adverse fiscal impacts on the County.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.***

The proposed additional residential use should have no impact based the issues listed in this section.

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- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.***

Police protection will be provided by the County's Local Sheriff's Department and the Maryland State Police. Since the property is approximately halfway between Bel Air and Dublin, fire protection will primarily be from both the Bel Air and Dublin Fire Departments. Water and sewer will be provided by on site well and septic system. The Applicant will be required to obtain a private hauler to dispose of the trash.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.***

The proposal is recognized by the Code as a use that is compatible with other uses in the B3/General Business District.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.***

This is not an issue in this case.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.***

The proposed use as requested is consistent with the County's Master Plan.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.***

There are no environmental features that would be impacted by the request.

- (10) The preservation of cultural and historic landmarks.***

Not applicable to the request.

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The Maryland Courts have addressed the question of the grant of special exceptions in Maryland and has provided the following guidance. The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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Based on all of the facts presented and applying the test set forth by the Maryland Court of Appeals, the Hearing Examiner finds that the proposed use at this location will not have any adverse impacts above and beyond the impacts normally associated with an apartment use regardless of its location. The Hearing Examiner recommends approval of the subject request subject to the following conditions:

1. The Applicant obtains any and all necessary permits and inspections.
2. The Applicant combine the two lots to create a 5 acre minimum lot size and record said combination among the land records of Harford County, Maryland.
3. No additional apartment units are permitted on the property.

Date MARCH 2, 2001

William F. Casey  
Zoning Hearing Examiner